

## *Epic v. Google*: Setting the Bar for Affirmative Antitrust Remedies in the Digital Age

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The July 2025 decision by the Ninth Circuit Court of Appeals in *Epic Games v. Google* marks a landmark development in the ongoing evolution of antitrust remedies for unilateral conduct in the technology sector.<sup>[1]</sup> The court's willingness to affirm not just prohibitory, but also mandatory, forward-looking injunctions—requiring Google to take affirmative steps to open its Android app ecosystem to competition—signals a vigorous approach to restoring competition in digital platforms. This post examines the key remedies upheld by the Ninth Circuit and analyzes the broader legal significance of the Ninth Circuit's holdings for antitrust enforcement in the technology sector.

### BACKGROUND

- In 2020, Epic Games filed parallel suits against both Apple and Google after they each removed Fortnite from their app stores following Epic's attempt to bypass their respective bans on in-app payment systems and the associated 30% commission by embedding alternative payment code in Fortnite.<sup>[2]</sup>
- The Apple case proceeded to a bench trial before Judge Gonzalez Rogers in the Northern District of California, while the Google case was consolidated with other related antitrust claims<sup>[3]</sup> and proceeded to a jury trial before Judge James Donato in the same district.
- In *Apple*, the district court found that Apple did not violate federal antitrust laws but did violate California's Unfair Competition Law due to its anti-steering provisions, which restricted developers from informing users about alternative payment options.<sup>[4]</sup> The court issued a permanent injunction prohibiting enforcement of Apple's anti-steering rules in September 2021, which the Ninth Circuit largely affirmed in April 2023.<sup>[5]</sup>
- In *Google*, the jury returned a unanimous verdict in favor of Epic, finding that Google engaged in exclusionary conduct in violation of antitrust laws due to (1) its restrictions on app distribution through the Play Store and (2) its tying of in-app payments to Google Play Billing. Following the December 2023 jury verdict, the district court issued a permanent injunction in October 2024,<sup>[6]</sup> which the Ninth Circuit affirmed in July 2025.

### KEY REMEDIES AFFIRMED BY THE NINTH CIRCUIT IN *EPIC V. GOOGLE*

The permanent injunction affirmed by the Ninth Circuit contains numerous provisions aimed at fostering competition in the Android app ecosystem. Beyond the significant effects on the market for apps on Android devices, these remedies are legally significant in their scope: rather than merely prohibiting Google from continuing to engage in

the conduct that the jury found to be anticompetitive, the injunction also includes a range of mandatory, affirmative provisions designed to actively restore competition and address the entrenched network effects and barriers to entry that Google's conduct had created or enhanced.

- **Prohibition of Anticompetitive Arrangements:** The injunction bars Google from continuing in certain conduct that was found to be anticompetitive by the jury, such as providing revenue-sharing or various other benefits to app distributors, developers, OEMs, or carriers in exchange for advantaging the Play Store or Google Play Billing, or for excluding rival app stores.
- **Catalog Access Remedy:** The injunction mandates that Google permit third-party Android app stores to access and themselves distribute the Google Play Store's catalog of apps, enabling rival stores to offer users a comparable library of software products.
- **App Store Distribution Remedy:** The injunction mandates that Google distribute third-party Android app stores through the Play Store, removing barriers that previously locked out competitors.
- **Technical Committee Oversight:** The injunction establishes a three-person Technical Committee, with members selected by both parties, to oversee implementation of the newly mandated functions and resolve technical disputes, with the district court retaining ultimate authority.

The Ninth Circuit emphasized that these remedies are not limited to stopping the specific unlawful acts, but are tailored to “pry open to competition a market that has been closed by defendants’ illegal restraints.” The court reasoned that, in digital markets characterized by network effects and high switching costs, merely prohibiting prior anticompetitive conduct is often insufficient to restore competition that has been damaged or eliminated.

## BROADER SIGNIFICANCE OF THE NINTH CIRCUIT’S HOLDINGS FOR ANTITRUST ENFORCEMENT

The Ninth Circuit’s decision in *Epic v. Google* is significant for several reasons:

- **Broad Articulation of Remedial Objectives:** The court reiterated the longstanding broad articulation of remedial goals behind antitrust injunctions; namely, to “terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation, and ensure that there remain no practices likely to result in monopolization in the future.”<sup>[7]</sup>
- **Affirmation of Broad Equitable Powers:** The court reaffirmed that district courts possess “large discretion” to craft remedies that not only prohibit unlawful conduct but also “pry open to competition a market that has been closed by defendants’ illegal restraints.”<sup>[8]</sup> This includes both prohibitory and mandatory injunctions, and, where necessary, structural relief.
- **Emphasis on Restoring Competition, Not Just Stopping Conduct:** The remedies are explicitly designed to address the network effects and entry barriers that can result from monopolistic conduct, not merely to halt the specific acts found unlawful. The court recognized that effective relief often requires going beyond a prohibition of the precise unlawful scheme and may include affirmative obligations to facilitate entry and competition.
- **Rejection of Overly Narrow Causation Standards:** The Ninth Circuit rejected Google’s argument that only remedies directly tied to the specific conduct found unlawful are permissible. Instead, the court held that a “significant causal connection” between the “violation found”—monopolization—and the market effects is sufficient, and that remedies need only be a “reasonable method” of redressing the problems caused by that violation.<sup>[9]</sup>
- **Analysis of Digital Market Realities:** The opinion explicitly found that digital platform markets possess unique characteristics—such as network effects and the difficulty of restoring competition once dominance is entrenched—which justify more robust and innovative remedial approaches.
- **Rejection of Google’s Duty to Deal Arguments:** The Ninth Circuit rejected Google’s argument that the catalog access remedy violated the “no duty to deal” principle found in *Trinko*<sup>[10]</sup> by effectively imposing an obligation on it to share the Play Store’s app catalog with rival app stores and allow alternative in-app billing systems. The Ninth Circuit clarified that while *Trinko* limits when a refusal-to-deal can give rise to liability, once liability is established, a district court has broad discretion to compel affirmative or corrective conduct to unwind anticompetitive effects.

## CONCLUSION

In sum, the Ninth Circuit's decision in *Epic v. Google* reflects an evolving approach to antitrust remedies in digital markets. By upholding both prohibitory and affirmative measures, the court recognized the complexities of restoring competition in technology ecosystems shaped by network effects and high barriers to entry. The ruling clarifies the scope of judicial authority in crafting remedies and highlights the unique challenges presented by digital platforms. The Ninth Circuit's analysis is likely to inform the remedies under consideration in the antitrust enforcement actions against Google pending in the District of Columbia and the Eastern District of Virginia, where Google also argued for narrowly tailored remedies and strict causation requirements.

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[1] *In re Google Play Store Antitrust Litig.*, 2025 WL 2167402 (9th Cir. July 31, 2025).

[2] *Epic Games, Inc. v. Apple Inc.*, No. 4:20-cv-5640 (N.D. Cal. 2020); *Epic Games, Inc. v. Google LLC*, 3:20-cv-05671 (N.D. Cal. 2020).

[3] *In Re: Google Play Store Antitrust Litigation*, No. 3:21-md-02981 (N.D. Cal. 2021).

[4] *Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898 (N.D. Cal. 2021), *aff'd in part, rev'd in part and remanded*, 67 F.4th 946 (9th Cir. 2023).

[5] *Epic Games, Inc. v. Apple, Inc.*, 67 F.4th 946 (9th Cir. 2023), *cert. denied*, 144 S. Ct. 681, 217 L. Ed. 2d 382 (2024), *and cert. denied*, 144 S. Ct. 682, 217 L. Ed. 2d 382 (2024).

[6] *In re Google Play Store Antitrust Litig.*, 2024 WL 4438249 (N.D. Cal. Oct. 7, 2024), *aff'd*, 2025 WL 2167402 (9th Cir. July 31, 2025).

[7] *In re Google Play Store*, 2025 WL 2167402, at \*16 (quoting *Optronic Techs., Inc. v. Ningbo Sunny Elec. Co.*, 20 F.4th 466, 486 (9th Cir. 2021)).

[8] *In re Google Play Store*, 2025 WL 2167402, at \*16 (quoting *Ford Motor Co. v. United States*, 405 U.S. 562, 573, 577–78 (1972)).

[9] *In re Google Play Store*, 2025 WL 2167402, at \*18.

[10] *Verizon v. Trinko*, 540 U.S. 398 (2004).

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